



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

December 6, 2019

**VIA ECF**

The Honorable James L. Cott  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *The New York Times Company et. al., v. Customs and Border Protection*, 19 Civ. 9017 (JLC)

Dear Judge Cott:

This Office represents U.S. Customs and Border Protection (“CBP”) in the above-referenced Freedom of Information Act (“FOIA”) action. On behalf of the parties, we write pursuant to this Court’s Order, Dkt. No. 15, and in advance of the initial pretrial conference scheduled for December 10, 2019, at 3:30 pm, *see id.* The Court’s order directed the parties to indicate “[w]hether the parties wish to proceed directly to summary judgment motion practice,” and “[w]hether the parties anticipate some production prior to any motion practice.” *Id.*

The parties do not wish to proceed to summary judgment motion practice at this juncture. Further, the parties have met and conferred regarding the Times’ FOIA requests and a potential production schedule. As a result of those discussions, the parties have stipulated to the following:

- CBP shall search only for records responsive to Plaintiffs’ FOIA request defined as the “Nationwide Request” in Plaintiffs’ Complaint, *see* Compl. ¶ 11. CBP shall not run searches for records responsive to Plaintiffs’ FOIA request defined as the “El Paso Request” in Plaintiff’s Complaint, *see id.* ¶ 10.
- CBP’s search for responsive records shall prioritize the eight CBP custodians agreed upon by the parties’ counsel via email on December 5, 2019 (the “December 2019 Search”).
- Beginning in January 2020, CBP shall review a minimum of 1,000 pages of records for responsiveness to the December 2019 Search per month, with a production schedule of such processed pages to be discussed by the parties in January 2020.
- After CBP begins a review of the records responsive to the December 2019 Search, the parties shall meet and confer in January 2020 to discuss the parties’ positions on potential additional searches (and set a production schedule).

The parties respectfully request that the Court so-order these stipulations. Further, the parties propose that, by February 3, 2020, the parties submit a joint status update letter that informs the Court of: (1) the total number of potentially responsive records that were located pursuant to the December 2019 Search as of that date and a proposed final schedule for processing and producing records responsive to the December 2019 Search; and (2) the parties' positions on any further searches (and, if necessary, corresponding proposed production schedules for such searches).

Last, given the lack of any current dispute between the parties, all parties are amenable to a cancellation of the conference currently scheduled for December 10, 2019. If the Court wishes to proceed with such a conference, however, counsel for the parties are of course willing to appear.

Thank you for your consideration of this matter.

Respectfully,

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